

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company)	
)	Docket No. 13-0301
Rate MAP-P Modernization)	
Action Plan – Pricing Annual)	
Update Filing.)	

**OPPOSITION OF THE PEOPLE OF THE STATE OF ILLINOIS TO
AIC’s MOTION TO STRIKE CERTAIN TESTIMONY AND EXHIBITS OF
THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois (“the People”), by and through Lisa Madigan, Attorney General of the State of Illinois, and pursuant to Part 200.190(e) of the Illinois Commerce Commission’s (“ICC” or the “Commission”) Rules of Practice (83 Ill. Adm. Code § 200.190(e)), hereby respectfully submit this opposition to Ameren Illinois Company’s Motion to Strike Certain Testimony and Exhibits of the People of the State of Illinois (the “Motion to Strike”), filed on September 10, 2013.

1. This docket is the first annual formula rate filing by AIC in which the reconciliation of the “prior rate year” is occurring. The Commission approved AIC’s formula rate template and tariff in Dockets 12-0001 and 12-0293, and the formula template AIC initially filed on April 19, 2013 was based on those dockets. However, following the General Assembly’s passage of P.A. 98-0015, AIC obtained Commission approval to change the formula rate template, and on June 5, 2013, AIC filed Supplemental Direct Testimony that changed its requested rates, many of its exhibits and schedules, and reflected the formula rate template approved by the Commission as a result of P.A. 98-0015.

2. This docket is the Commission's first opportunity to review the implementation of AIC's formula rate template as it applies to the reconciliation of the "prior rate year" and is the first opportunity to implement the formula rate template as modified pursuant to P.A. 98-0015.

3. Not surprisingly, witnesses for the Staff and the People raised questions concerning the implementation of AIC's tariff. As Staff witness Ebrey stated in her rebuttal testimony:

The Company's argument, that the mechanics of a formula model should be the deciding factor for any proposals made in this case, should be given little, if any, weight. By focusing on the mechanics and line descriptions of the untested formula, the merits of the proposed adjustments are not fully vetted.

Staff Ex. 6.0 at 22.

4. While the annual rate filing under Section 16-108.5(d) does not contemplate changes to the formula rate tariff, the Commission is authorized to adopt changes to the formula rate tariff in an action under Article IX and issue a decision thirty days prior to the date new rates take effect. 220 ILCS 5/16-108.5(c).

5. Section 16-108.5(c) specifically provides that the law is "not intended to limit the Commission's authority under Article IX and other provisions of this Act to initiate an investigation of a participating utility's performance-based formula rate tariff" provided that "new rates take effect no less than 30 days after the date on which the Commission issues an order adopting the change." 220 ILCS 5/16-108.5(c). New charges following the annual formula rate review "shall take effect beginning on the first billing day of the following January billing period." *Id.* at 16-108.5(d)(2). The 30th day preceding January 1, 2014

is Monday, December 2, 2013. Further, because January 1 is the New Year holiday, the first billing day of January should be January 2, giving the Commission until December 3, 2013 to adopt changes to the formula rate tariff effective in January.

6. Section 16-108.5 specifically authorizes the Commission to consider how to treat AIC's costs in an annual rate proceeding and to implement those changes 30 days after the formula rate tariff is modified. 220 ILCS 5/16-108.5(c)(quoted above). While Section 16-108.5(d) limits the Commission's authority to change the tariff in the annual rate review, it specifically directs the Commission to review AIC's rate request pursuant to "the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act." 220 ILCS 5/16-108.5(d). AIC's motion erroneously asks the Commission not to carry out this responsibility.
7. There are currently two dockets addressing the tariff changes raised by the testimony in this docket. On September 10, 2013, the Commission suspended AIC's August 19, 2013 tariff filing that covered some of the issues raised by the Staff in this docket. That matter is now docketed as 13-0517. On August 30, 2013, the People filed a Complaint¹ under Sections 9-201(b), 9-250, and 16-108.5 of the Public Utilities Act, docketed as 13-0501, requesting tariff changes to address the issues raised by their witnesses in this docket.

¹ The People's Complaint in Docket No. 13-0501 is attached hereto as Exhibit A.

8. A request to consolidate Dockets 13-0501 and 13-0301 is fully briefed in Docket 13-0501. In their Reply in Docket 13-0501, the People requested that the Commission consolidate this docket with Docket 13-0501, their Complaint to Suspend Tariff Changes Submitted by Ameren Illinois and to Investigate Ameren Illinois Rate MAPP Pursuant to Sections 9-201, 9-250 and 16-108.5(c) of the Public Utilities Act. The People demonstrated that the existing schedule in Docket 13-0301 could accommodate review of the tariff changes implicated by the adjustments recommended by the parties in Dockets 13-0301 and 13-0501 with minor changes (e.g. an interim order on tariff changes issued after the proposed order date of November 8, 2013 but before December 2, 2013).
9. As stated in the People's Reply² in support of consolidation in Docket No. 13-0501, the issues of (i) the rate base to be used in AIC's ROE collar calculation on Schedule FR A-3 of the Company's formula rate tariff and (ii) applying interest to the net-of-tax reconciliation balance shown on the proposed Schedule FR A-4 of the Company's formula rate tariff, are issues that have been thoroughly discussed in pre-filed testimony in Docket No. 13-0301. These two issues also form the final two (of three) counts of the People's Complaint, currently before the Commission in Docket 13-0501, presenting the Commission with the opportunity to revise AIC's formula rate template to

² See Docket No. 13-0501, Reply of the People of the State of Illinois to AIC's Response to AG Request to Consolidate, ¶¶ 14 and 15, attached as Exhibit B.

accommodate the People's recommendations thirty days before the rates in this docket take effect.³

10. While consolidation of this docket with Docket 13-0501 (and Docket 13-0517) would promote administrative efficiency and save time and the resources of both the Commission and the parties, even in the absence of consolidation, Section 16-108.5(d) directs the Commission to consider the issues raised by the People in this docket pursuant to Article IX and fundamental ratemaking principles. The implementation of the changes requested by the People, when accepted by the Commission, may (or may not) require changes in the tariff.⁴
11. AIC moved to strike certain direct and rebuttal testimony⁵ of the People's witnesses concerning only two issues (calculation of the ROE collar and the application of interest to the net-of-tax reconciliation balance). AIC argues that the Commission cannot consider the ratemaking treatment of the specified accounting items because changes to an electric utility's formula rate template structure must be made under a Section 9-201 proceeding.⁶ This argument should be rejected because (1) it is not clear that a tariff change is necessary for the Commission to find that interest should apply to the net-of-tax reconciliation balance, and (2) requests for tariff changes are currently pending in other dockets that would accommodate the requested accounting treatment.

³ New charges following the annual formula rate review "shall take effect beginning on the first billing day of the following January billing period." *Id.* at 16-108.5(d)(2).

⁴ The People maintain that their recommendation to apply interest on the net-of-tax reconciliation balance does not require a tariff change, although it could be written into the tariff.

⁵ See citations to testimony of the People at page 1 of AIC's Motion to Strike.

⁶ Motion to Strike at 3.

12. Dockets 13-0501 and 13-0517 are open proceedings based on Section 9-201 of the Public Utilities Act. 220 ILCS 5/9-201. The People already requested consolidation of Docket Nos. 13-0301 and 13-0501 in their Complaint and in their Reply to AIC's Response in Docket No. 13-0501, and the People are further requesting consolidation of Docket Nos. 13-0301 and 13-0501 with Docket No. 13-0517 in a motion filed today in this Docket, 13-0301, as well as in a motion filed today in Docket No. 13-0517. To the extent the Commission determines that consolidation of Docket Nos. 13-0501 and 13-0517 with this docket is appropriate, the aforementioned direct and rebuttal testimony of the People's witnesses in Docket No. 13-0301 is not "unnecessary and irrelevant" as the Company suggests, but rather is vital to the resolution of two of the formula rate template structure issues being considered by the Commission.
13. AIC argues at page 5 of its Motion to Strike that "[l]itigating template changes in this docket as well as Docket No. 13-0501 requires the parties to expend unnecessary additional time and expense." In fact, because the formula rate template changes urged by the People (and the Staff) as well as the template changes proposed by AIC in its August 19, 2013 tariff filing (Uncollectible Expense, Depreciation Expense, presentation of net revenue requirements, and year-end balances of Materials Supplies and Customer Deposits), have already been the subject of Direct, Rebuttal and Surrebuttal Testimony in Docket No. 13-0301, requiring the parties to litigate these issues in a separate proceeding, viz. Docket No. 13-0501, would require the parties to expend unnecessary time and expense.

14. The Commission should further deny AIC's motion because the rationale behind the motion would compel the Commission to disregard all testimony in this docket that raised potential tariff template issues. While AIC selectively requests to strike the People's testimony, the Staff and AIC have also filed the following testimony that addresses issues that also would require changes to the formula rate tariff template:

- Direct Testimony of Theresa Ebrey, ICC Staff Ex. 1.0, 14:291 through 16:250 (Adjustment to Reconciliation Year Uncollectible Expense)
- Rebuttal Testimony of Theresa Ebrey, ICC Staff Ex. 6.0, 7:141 through 8:158 (Adjustment to Reconciliation Year Uncollectible Expense)
- Direct Testimony of Michael Ostrander, ICC Staff Ex. 2.0, 7:140 (starting at "I") through 7:144 (Cash Working Capital calculations); 15:298 through 16:318 (Adjustment to Depreciation Expense); and 18:354 through 18:365 (Adjustment to Materials & Supplies and Customer Deposits)
- Rebuttal Testimony of Michael Ostrander, ICC Staff Ex. 7.0, 9:197 through 12:242 (Cash Working Capital calculations); 16:343 through 19:393 (Adjustment to Depreciation Expense); and 25:540 through 27:575 (Adjustment to Materials & Supplies and Customer Deposits)
- Rebuttal Testimony of Ronald D. Stafford, AIC Staff Ex. 9.0, 8:171 through 9:213 (Adjustments to Reconciliation Year Uncollectible Expense, Materials & Supplies and Customer Deposits, Cash Working Capital calculations, Depreciation Expense, Rate Base in ROE collar calculation, and Deferred Income Tax on Reconciliation Variance Balance); 29:657 through 38:853 (Rate Base in ROE collar calculation and Deferred Income Tax on Reconciliation Variance Balance)
- Surrebuttal Testimony of Ronald D. Stafford, AIC Staff Ex. 14.0, 4:75 through 5:99 (Surrebuttal Revenue Requirement and Rate Base With Template Changes); 25:509 through 39:813 (Deferred Income Tax on Reconciliation Variance Balance and Rate Base in ROE collar calculation); 40:816 through 41:848 (Adjustments to Reconciliation Year Uncollectible Expense and Depreciation Expense); 43:878 through 43:895 (Adjustment to Materials & Supplies and Customer Deposits)

15. At Page 6 of the Motion to Strike, AIC states:

[a]lthough the AG offered the testimony of two witnesses in Docket 13-0301, neither of them opposed the template changes suggested by Staff in testimony in that case and reflected in the August 19 Filing. . . . Thus, notwithstanding the allegations in Count I, it is AIC's position that the tariff changes in the August 19 Filing are not subject to controversy and so may be approved without suspension.

AIC's shifting position is fundamentally inconsistent. The Commission cannot grant a motion to strike one party's testimony while accepting other parties' testimony that raise the same issues and implicate the same statutory provisions.

16. Among the formula rate issues that AIC chooses not to subject to its motion is the suggestion that its depreciation expense increase from \$6.04 million (Ameren Ex. 18.1, Sch. FR A-1, line 6) to \$21.84 million (Ameren Ex. 18.3, Sch. FR A-1, line 6). Ameren's motion cynically applies its version of the law to the People, while attempting to retain an adjustment that increases its revenues by close to \$15 million that admittedly requires a tariff change. In total, AIC would leave in the record testimony proposing that AIC retain \$18.078 million, despite the need for these changes to be implemented by a change to the formula rate template structure. See Ameren Ex. 18.0, page 4-5. (Compare a \$39.006 million reduction to a \$20.928 million reduction.)
17. If formula rate template structure changes are not properly heard in an annual formula rate update and reconciliation proceeding due to the restrictions of Sections 16-108.5(c)(6) and 16-108.5(d)(3) of the PUA, then the testimony of Staff and AIC in Docket No. 13-0301 concerning

proposed formula rate template structure changes is also irrelevant to Docket No. 13-0301 and should be stricken from the record.⁷

18. AIC's August 19, 2013 tariff filing has been suspended and is subject to hearing, as are the tariff changes requested by the People in Docket 13-0501. If the People's testimony is stricken, a consistent application of AIC's statutory interpretation requires that testimony identified above regarding formula rate template changes by Staff and AIC should also be stricken.

WHEREFORE, for the reasons stated above, the People of the State of Illinois respectfully request that the Commission deny the Company's Motion to Strike.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS

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⁷ The fact that the People's witnesses did not address the proposed template changes found in AIC's August 19, 2013 tariff filing through rebuttal testimony in Docket No. 13-0301 in no way implies acceptance of those template changes in the Section 9-201 proceeding that will review the tariff filing. The People have already requested through a Section 9-201(b), 9-250 and 16-108.5 complaint that the Commission suspend and investigate the template changes found in AIC's August 19 tariff filing. Docket 13-0501, Complaint at 5.